

appellant and the learned APP, we have scrutinised the entire record, and re-appreciated the evidence both oral and documentary **as is raised on the record** before the Additional Sessions Judge.

3. The prosecution story as revealed on reappreciation of evidence stated briefly is that on 2-4-1993 accused the present appellant arranged a party at his Farm House and it was attended by deceased Anna @ Ashok, Ravindra Bhagat, Dnyaneshwar Patil, Bhagwan Waghmare and some others. At the party alcohol was consumed. Fish was eaten and the deceased Anna, accused Jagdish, Ravindra Bhagat, Dnyaneshwar Patil and Bhagwan Waghmare started to go to their village Shivkhar in the auto rickshaw of one Ramesh. When they reached near the village the road was very bad around the bridge and therefore they stopped teasing themselves and decided to go to village on foot. They accordingly started leaving behind the accused, the victim and the rickshaw driver and after having walked for some distance, they heard shouts of victim Anna and therefore came back but found the rickshaw going away and victim Anna staying there at the spot with injuries on his person. Attempt to call another rickshaw and take the victim to hospital could not materialised because on the way the victim succumbed to the injuries caused. A complaint was lodged by Ravindra Bhagat who is also examined as P.w.1 wherein he alleged that the accused being enraged by the initiation of the victim regarding the sister of the

accused decided to teach the victim a lesson and therefore stabbed him and went away. It was on the basis of this complaint, the investigation was taken up and accused was arrested and prosecuted as above. The prosecution has examined as many as 12 witnesses to prove its case. It is on the basis of these evidence, the learned trial Judge came to the conclusion of guilt and convicted the accused as such. It is this order of conviction which is impugned in this appeal on the ground mentioned in the memo of appeal and as canvassed before us. Basically it is the contention of the appellant that the evidence on record is grossly inadequate to come to the conclusion of guilt and therefore the learned Judge has erred in convicting the appellant.

4. In this case, the prosecution has examined 12 witnesses. P.w. 1 Ravindra Bhagat, P.w. 2 Dnyaneshwar Patil, and P.w. 3 Bhagwan Waghmare were cited and examined as eye witnesses. Each of them have stated the prosecution story to an extent and denied any other knowledge thereafter. They admit of their going to the party, they admit coming back in a rickshaw and get down and started going home walking and thereafter they denied any knowledge. When confronted with their previous police statement, they said that they never made such statement before police. Each of them was declared hostile. Same is the story of P.w. 4 Ramesh Bhoir who speaks of everything till they reached near the bridge of village Shivkar. When the three witnesses P.ws. 1 to 3 got down

and started going by foot , it is alleged that the accused stabbed the victim. He was also declared hostile and confronted with his previous statement, which he denied. P.w. 5 Suwarna Jadhav is the daughter of deceased, who last saw the accused leaving with the deceased.

5. P. w. 6 Prakash Satarkar is the panch witness who proved the inquest panchanama, which is not disputed. P. w. 7 Sunil Mane is the panch of seizure of clothes of the accused. But he has denied to be present when the clothes were seized. He was therefore declared hostile. P. ws. 8 and 9 Prabhakar and Laxman are panchas to the spot panchanama. Both of them declared that they were not present. Therefore they also turned hostile. P.w. 10 is another panch to the recovery of suri at the instance of the accused and he has proved the same. The prosecution has however, failed to prove that this suri was used by the accused for stabbing the victim. P. w. 11 P. S.I. Gurav is the Sub Inspector who took down the complaint of P.w. 1 and proved it as Exh. 19. He has also proved the statements of P. ws. 1 to 3 made before the police and proved the same. On perusal of those statements and the deposition of these witnesses in the court, goes to show that they gave different version to the police as to what exactly has transpired. There is no corroboration to the statement made before the police. The reason for assault given by each of these persons in the police statement is different. They refused to say so in the court. They disowned the

statement as made and proved and in such circumstances the learned trial Judge has erred in convicting the accused.

6 It is pertinent to note that all the eye witnesses have turned hostile. The rickshaw driver has also turned hostile. The panchas have turned hostile and even if the statement of these witnesses are to be accepted, all that has been proved by the prosecution is that there was a party on 2nd April and it was attended by those persons. Accused and victim were amongst them and they came back in the rickshaw of Ramesh and got down near village Shivkar, started going home by walk and on hearing the shouts looked back and saw the rickshaw leaving. Thus if the entire statement is accepted as correct even then it is not said that as to who stabbed the victim. The reasons given by these witnesses in their statement regarding the motive are contradictory and different. Apart from that in the evidence before the court, no motive has stated by the accused to do so. Even the rickshaw driver P. w. 4 Ramesh has also turned hostile. It is therefore the evidence of P.ws. 1 to 3 though they are hostile, is to be accepted. All that has been proved by the prosecution is that they heard shouts, turned back and saw the rickshaw going leaving the injured victim on the spot. The possibility of either of the two, having been stabbed cannot be overruled. The fact that rickshaw was brought by the accused is also admitted. Therefore even accepting the evidence of these witnesses, though they are declared hostile, all that can be inferred is that the victim was stabbed by either

the present appellant or Ramesh. When such position creates such a serious doubt as to the identity of the person stabbed and the entire evidence is smeared with hostility, in our opinion it is absolutely unsafe to record any conviction or to sustain it. No doubt P.w. 12 Dr. Pawar proves that the death was homicidal but the prosecution has miserably failed to connect the accused to the crime. It is not certain as to whether the present appellant stabbed the victim or Ramesh or after the rickshaw left somebody else did it, as according to the witnesses they took sometime to reach the spot.

7. According to the police statement of one of them, victim was with accused and hence should not have been stabbed him. But the two others do not say so though they reached the spot at the same time. Therefore it again creates a doubt as to whether the victim named the accused before the witness. The possibility that he did not say so may overrule, because one of the witness says that he did it but two others did not say about it, when all the three reached at the sametime. In such state of evidence, in our opinion, it is impossible to sustain the conviction. The order of the learned Judge convicting the accused therefore is required to be set aside. In the result the appeal succeeds and is allowed. The conviction and sentence against the accused is set aside. The accused is acquitted of the charge under section 302 of IPC. He is already on bail. His bail bonds are cancelled.

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